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Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Service Rules for the 746-764 and 776-794)	WT Docket No. 99-168
MHz Bands, and Revisions to Part 27 of the)	
Commission's Rules)	
)	
Auction of Licenses in the 747-762)	DA 00-43/Rpt. No. AUC-99-31-A
And 77-792 MHz Bands Scheduled for)	
May 10, 2000)	

REPLY COMMENTS OF OMNIPOINT CORPORATION

Omnipoint Corporation ("Omnipoint"), by its attorney, hereby files this reply in response to the comments filed on the auction procedures for Auction No. 31, as proposed in the FCC Public Notice, "Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for May 10, 2000," DA 0043 (rel. Jan. 10, 2000). Omnipoint believes that the Bureau should clarify how the auction procedures would apply to a bidder seeking a 30 MHz nationwide license.

The bid withdrawal process for the nationwide bidder, for example, is not yet sufficiently clear. The nationwide bidder that is the high bidder on all licenses in round one, for example, and then is replaced on some licenses as high bidder in round two (by a regional bidder) would not be *required* in round three to withdraw its high bids from the remaining licenses, since the nationwide bidder may bid back the licenses or apply an activity waiver in round three. A nationwide bidder that does not engage in bid withdrawal but is replaced by a high bidder in a given round, therefore, continues as an

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otherwise eligible bidder.¹ At some later round in the auction, however, it is unclear whether the nationwide bidder would be required by the FCC to withdraw if it does not hold all licenses because “it must win either this nationwide aggregation or no licenses at all.” Public Notice, at 10. For example, does the FCC *mandate* that the nationwide bidder exercise bid withdrawal (which is significantly different than the *voluntary* bid withdrawal that other regional bidders may engage in)? The terms and timing of the nationwide bidder’s *mandated* bid withdrawal, if any, must be further clarified by the Bureau’s 700 MHz auction procedures.

Additionally, several aspects of the nationwide bidder bid withdrawal and the eligibility restoration procedures require further clarification, such as the following:

1. How does the eligibility restoration mechanism (i.e., eligibility and waivers) operate as to all other auction applicants if only one nationwide bidder (the “lead” bidder) withdraws? Are there differences in the application of the eligibility restoration mechanism if that “lead” bidder is the high bidder on all regions or only on some regions/licenses at the time that it withdraws a bid (especially if the lead bidder uses its five activity waivers before it withdraws the bid)?
2. If a regional bidder withdraws early or never bids (e.g., uses its five activity waivers in the first five rounds) and then a nationwide bidder withdraws late in the auction (e.g., round 200), are the initial eligibility and five activity

¹ Compare *In the Matter of Service Rules for the 746-764 and 776-794 Bands, and Revisions to Part 27 of the Commission’s Rules, First Report and Order*, WT Docket 99-168, FCC 00-5, at ¶ 127 (rel. Jan. 7, 2000) (Once a nationwide applicant “withdraws from a market, it must withdraw from all markets and will be ineligible to continue bidding for any licenses.”).

waivers restored to this regional bidder even though this restoration could occur weeks after that bidder had dropped out of the auction?

3. Is eligibility restored for all other applicants, including other nationwide bidders, each time that a nationwide bidder engages in bid withdrawal? For example, if there are 20 nationwide bidders in the auction, is it accurate that when the first nationwide bidder withdraws (e.g., at round 200) then the auction may last an *additional* 120 rounds, at a minimum? In this example, each nationwide bidder could extend the auction for a *minimum* of six rounds (one round to place the bid and five activity waivers).
4. How does the eligibility restoration mechanism affect the Stage I, II, and III activity rules? For example, if a nationwide bidder withdraws in Stage III and the eligibility and waivers of all other bidders are restored and reset to the levels at the beginning of the auction, which activity rule -- Stage I (50%) or Stage III (100%) -- then applies? How does the eligibility restoration affect, if at all, the Commission's decisions on transitioning from one stage to another?²
5. If a regional bidder uses its two bid withdrawals,³ are any of these rights to bid withdrawal restored if a nationwide bidder subsequently withdraws a bid?

It is also unclear whether and how the Stage I, II, and III activity rules would apply to a bidder for a 30 MHz nationwide license. While the activity rules apparently would not apply due to the fact that the nationwide bidder must be either the high bidder or submit a minimum acceptable bid on all licenses in each round, the Public Notice (at

² The Public Notice, at 3, suggests that the Bureau will consider "a variety of measures of bidder activity" when deciding to transition from one stage to another. While an eligibility restoration event may dramatically impact bidder activity, the Public Notice does not indicate that it is also a factor in the stage transition decision.

³ See Public Notice, at 9.


3-4) explains that the activity rules apply to all bidders. Omnipoint asks for the Bureau to clarify how the activity rules would apply to a nationwide bidder.

Omnipoint notes that the Commission proposes to offer five activity rule waivers to all bidders, presumably including nationwide bidders. Public Notice, at 4. Omnipoint asks the Bureau to clarify how nationwide bidders may use these activity rule waivers. It appears that a nationwide bidder, for example, could use its activity waivers to avoid bid withdrawal and maintain its bid eligibility for a subsequent round(s) in the auction.

Bureau clarification of how the nationwide bidder provisions work with the other bidder and auction mechanisms, as discussed above, is of critical importance to potential auction participants.

Respectfully submitted,

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